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B. Webb
PATENT

3/14/03

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: SEIM Examiner: Bradford, R.
Serial No.: 09/827,763 Group Art Unit: 3762
Filed: April 6, 2001 Docket No.: GUID.008US01
Title: ATRIAL TACHYARRHYTHMIA DETECTION SYSTEM AND METHOD

CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence and the papers, as described hereinabove, are being transmitted via facsimile only-Formal Entry, to the attention of Examiner Bradford of the Assistant Commissioner for Patents, Washington, D.C. 20231, on March 13, 2003.

Facsimile No. (703) 872-9302

By: *Kelly S. Waltigney*
Kelly S. WaltigneyRESPONSE TO RESTRICTION REQUIREMENT

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

Please enter into the application record the attached Change of Correspondence Address. Please note that Applicant is re-submitting the Change of Correspondence Address in view of an apparent oversight by the Office to enter a previously submitted Change of Correspondence Address.

Applicant has received and carefully reviewed the Examiner's Restriction Requirement dated February 13, 2003. Claims 1-36 were subject to a two-way restriction. Applicant hereby provisionally elects claims 1-28 of Group I with traverse. Consideration of the following remarks and withdrawal of the Restriction Requirement are respectfully requested.

Applicant traverses the Examiner's Restriction Requirement, and respectfully asserts that a sufficient showing of "distinctiveness" as is required to support the restriction of the Group I and II claims has not been established. Applicant, in traversing the Examiner's Restriction Requirement, is directing its arguments to the limited issue of the lack of proper grounds supporting the restriction of Applicant's

claims for examination purposes. As such, Applicant's characterization of the claimed subject matter as it may pertain to the issue of distinctiveness or lack thereof within the context of restriction practice is not to be construed as an admission that the claimed inventions are obvious over each other within the meaning of 35 U.S.C. § 103.

The Examiner asserts that the claims of Groups I and II require restriction, since these inventions are deemed related as combination and subcombination, and are considered distinct under MPEP § 806.05(c). More particularly, the Examiner asserts that, in the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because the combination does not require inhibiting delivery of the atrial pace signals during the detection windows. The Examiner concludes that the subcombination has separate utility, such as not requiring inhibiting delivery of pacing signals to the atrium in response to detecting high atrial interval rates, but rather inhibiting delivery of pacing signals to the atrium in response to any detected arrhythmia.

Applicant respectfully asserts that the Examiner's characterization of the combination-subcombination relationship is in error. The Examiner contends that the subcombination has separate utility because it can provide for inhibiting delivery of pacing signals to the atrium in response to any detected arrhythmia.

A review of claim 29 of Group II reveals, however, that one or more detection windows, during which delivery of atrial pace signals can be inhibited, are initiated in response to detection of atrial events during an atrial arrhythmia. Claim 15 of Group I recites inhibiting delivery of pacing signals to the atrium in response to detecting high atrial interval rates indicative of atrial arrhythmia. Contrary to the Examiner's contention, the subcombination, as presently crafted, does not provide for inhibiting delivery of pacing signals to the atrium in response to any detected arrhythmia.

To support a requirement for restriction, the Examiner has the burden of showing (1) two-way distinctiveness and (2) providing reasons for insisting on restriction. In order to establish that combination and subcombination inventions are distinct, the Examiner has the burden of demonstrating two-way distinctiveness. The

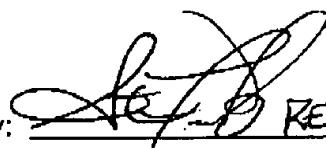
Examiner has not satisfied the burden of suggesting a viable example of separate utility. Rather, the asserted basis to support a finding of separate utility is defective, as discussed above.

Applicant respectfully contends that the above arguments provide persuasive evidence that the other utility suggested by the Examiner cannot be accomplished within the context of the presently claimed inventions. As such, the burden is shifted to the Examiner to document a viable separate utility or withdraw the instant restriction requirement.

Should there be any remaining issues that could be readily addressed over the telephone, the Examiner is encouraged to contact Applicant's Representative at 651/686-6633.

Respectfully Submitted,

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